IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

AS.No. 387 of 2000(C)

OS.68/1996 of SUB COURT, NEDUMANGAD
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APPELLANT: DEFENDANT

RAJAMMA D/O PARVATHY
RESIDING AT KANAKUZHY PUTHENVEEDU
THYARA, PALLIVETTA
ARYANADU

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

RESPONDENTS: PLAINTIFFS
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1. OMANA,D/O PARVATHY AGED 45
EMPLOYED AS ' NURSE' IN WEST GERMANY
RESIDING AT OMANA BHAVAN,
ARYANADU VILLAGE, THIRUVANANTHAPURAM.

2. PARVATHY D/O PONNAMMA, AGED 66,
RESIDING AT OMANA BHAVAN
ARYANADU VILLAGE, THIRUVANANTHAPURAM
THE 2ND RESPONDENT IS THE MOTHER AND
POWER OF ATTORNEY HOLDER OF THE 1ST RESPONDENT

3. ASOKAN, S/O DIVAKARA PANICKER
ASOKA MANDIRAM, MELETHAMBATTI VILA THALA THATTU
VELLUMKETTUVILA, IDAKKODE, PALLICHAL VILLAGE

BY ADV. SRI.L.MOHANAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 14/08/2007, ALONG WITH RFA NO. 666 OF 2004 RFA NO. 665 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN C.M.P NO.1870 OF 2001 IN A.S. NO.387 OF 2000

DISMISSED

14-08-2007 SD/-K.PADMANABHAN NAIR, JUDGE

K.PADMANABHAN NAIR, J.

A.S No.387 of 2000
and
R.F.A Nos. 665 & 666 2004

Dated this the14th day of August 2007

JUDGMENT

These three appeal arise from a common judgment and decree passed by the court below in O.S. 68/1996, 91/1996 and O.S. 17/2000. The appellant in all the three appeals are the defendant in O.S. No.68/1996 and plaintiff in O.S. No. 91/96 & O.S. 17/2000 respectively. parties are arrayed as parties in the respective suits.

2.**A.S. 387/2000**

This appeal arise from a decree and judgment passed in O.S 68/1996 by which the trial court has declared the title of the 3rd plaintiff and passed decree and judgment allowing him to recover plaint B schedule property from the possession of the 1st plaintiff and also a decree of permanent prohibitory injunction. The suit was originally filed as O.S. 475/1992 before the Subordinate Judge's Court Trivandrum for declaration of title of recovery of possession and injunction. Subsequently it was transferred to Subcourt Nedumangad and renumbered as O.S. 68/1996. The 1st plaintiff is the daughter of the 2nd plaintiff. Originally the plaintiffs 1&2 filed the suit. It was averred that the 1st plaintiff purchased the property under a sale deed No.4299/1978. There was a small building in

the property in which the 2nd plaintiff was residing. The 1st plaintiff was working as nurse in West Germany She constructed a double-storied building in A Schedule property with two shop rooms in the ground floor. The remaining portion is used for residence. It was averred that she was used to come and reside in the building every year on leave. The defendant Rajamma is the elder sister of the 1st plaintiff and daughter of the 2nd plaintiff. It was averred that the defendant has no right or possession of the building. Since the 2nd plainitff was residing alone, occasionally defendant used to come and reside in the house taking into advantage of the relationship It was averred the one of the rooms in the newly constructed building let out to one Sanal kumar and another room was kept locked. . It was averred that 25-5-1991 the defendant trespassed into the room and started a clinical laboratory. The 2nd plaintiff lodged a complaint before the police But the police did not take any action in the complaint. Hence the suit for recovery on the strength of title and for injunction.

3. The defendant filed a written statement contending that she along with her daughters were residing in the building for more than 14 years prior to the date of filing the suit. It was contended she was running the business in shop room door No.,639 for 14 years. It was

admitted that the suit property was purchased by the plaintiff. in in 1978. But according to the defendant she was looking after the property since the 1st plaintiff was employed in Germany It was contended when the 1st plaintiff let out the building to the defendant in the year 1979 for her residence and running the business. The parties had agreed that the defendant should look after the properties and buildings in lieu of rent. It was contended that the 1st plaintiff will reside in another building as and when she comes on leave. The defendant have no other building. The averment that she trespassed in to the building was denied. It was contended that since the police was convinced the fact that the defendant was a tenant and not a trespasser no action was initiated against her. Hence she prayed for a dismissal of the suit.

4. Subsequently the 1st plaintiff filed a petition to implead an additional plaintiff and he was impleaded as additional 3rd plaintiff. After the amendment of the plaint the defendant filed an additional written statement denying the title of the 3rd plaintiff. It was contended that the building was constructed by her and the 3rd plaintiff did not get any right or possession and even if the plaintiff had any right over the building and the properties the same was lost by adverse possession and limitation. It was

contended that the appellant spent a lot of amount for improving the building and the property and in case of a decree for eviction passed she is entitled to get the value of the improvements effected by her.

5. O.S 91/1996 was originally filed as O.S. 429/1992 before the Munsiff's Court Nedumangad. . It was subsequently transferred to Sub Court Thiruvananthapuram to be tried along with O.S 475/1992 and renumbered as O.S. 517/1994. Subsequently that suit was transferred to Subcourt Nedumangad and renumbered as O.S. 91/1996. The plaintiff in the suit is the defendant in O.S. 475/1992. The only averment in the suit was that the plaintiff was in absolute possession and enjoyment of the plaint schedule building and shop rooms for the last 13 years. It was averred that the plaintiff was residing in the residential building and conducting a provision store in the shop room on the ground floor of the building for the past 13 years. It was contended that the building situated 57 cents of property comprised in Sy.No. 2222/2/7 of Aryanad village and the same was purchased by the defendant who was working in West Germany. It was averred that the defendant let out the building to the plaintiff and she was looking after the affairs of the property and the building in lieu of rent. It was contended that the defendant who was the owner of the building is

attempting to forcibly dispossess the plaintiff from plaint schedule buildings hence the suit for decree of permanent prohibitory injunction restraining the defendant from forcibly evicting the plaintiff from the suit premises.

6. The 1st plaintiff in the O.S. 68/1996 filed written statement contending that the suit is frivolous and vexatious one. It was contended that plaintiff was never in possession of the building and she trespassed in to the shop room and started a clinical laboratory by name Bharath Clinical Laboratory The averment that the plaintiff has been in possession of the suit premises for the past 13 years was denied. The averment that the building was let out to the plaintiff, and she was looking after the affairs of the property and building of the plaintiff were also denied . It was contended that the defendant never entrusted plaintiff to look after the properties. It was contended that the defendant has not let out the residential building or the shop room to the plaintiff at any time. It was contended that when the plaintiff attempted to trespass into the building the defendant filed O.S.475/1992 before the Subcourt Thiruvananthapuram for evicting the plaintiff from the building and in that suit an injunction was passed and the suit was decreed. The averment that plaintiff was trying to forcibly dispossess the defendant was denied. She prayed for dismissal of

the suit.

7. O.S.17/2000 (Originally filed as O.S. 199/1997 of Munsiff Court Nedumangad) was also filed by the plaintiff in O.S. 91/1996 alleging that she is in absolute possession and enjoyment of the plaint schedule building and shop rooms and the 3rd defendant was trying to evict her from the suit premises using force. It was contended that initially her sister Omana attempted to forcibly evict her and she was forced to file O.S. 429/1992 against Omana for a decree of permenant prohibitory injunction. It was also admitted that Omana filed O.S 475/1992 and the suit was pending Hence the suit for decree of permenant prohibitory injunction to restrain the 3rd defendant from forcibly evicting her.

8. The defendant filed written statement It was cotnended that the buildings and property of the absolutely belonged to defendant and he purchased thersame as per Sale deed No. 3772/1996. It was contended that the plaintiff had no possession over the residential building. But she trespassed in the shop room and started a clinical Laboratory in it. So the previous owner Omana filed O.S 475/1992. The plaintiff filed O.S. 429/1992 before the Subcourt Trivandrum against the vendor of the defendant and those suits were pending . It was also contended that plaintiff filed O.S. 429/1992 before the Munsiff Court Nedumangad for

decree of injunction against Omana which was transferred to Sub-court Thiruvananthapuram and renumbered as O.S. 517/1992 That suit was also transferred to Sub-court Nedumangad and renumbered as O.S 91/1996. It was contended that there was no rental arragement between the plaintiff and omana and she was not entitiled to get any relief .

9. The defendant raised a counter claim for decree of permanent injunction restraining the plaintiff from from disturbing peaceful possession and enjoyment of plaint schedule property by the plaintiff. That suit was withdrawn to made over to sub-court Nedumangad and renumbered as O.S. 17/2000.

10. Since all the three suits are in respect of the same property and a common question of fact and law arose in all the three suits consolidated and jointly tried . The evidence consists of oral testimony of PWs 1 and 2, DWs 1 to 6 Exts.A1 to A11, B1 to B23 . C1 & C2 are the report and plan submitted by the Commissioner appointed in the case.

11. The fight is between the appellant in these three appeals and the 3rd respondents in A.S 387/2000 During the pendency of the suits the 1st respondent who was the owner of the properties assigned her rights in favour of 3rd respondent under Ext.A4. So the main question arising for

consideration in all these appeals is whether the contention of the appellant that she is a tenant of the buildings is true and correct. In addition to that she had raised a contention that rights if any of the contesting respondent is lost by adverse possession and limitation. The plaint schedule property in O.S. 68/1996 is 57 ½ cents of land with a building. One building is a tiled one and other is a double-storied building There are two shoprooms on the ground floor of the double- storied building The B schedule shop room is one of the rooms in the double storied building. According to the 1st plaintiff in O.S 68/1996 she purchased the property in the year 1978 That fact was admitted by the defendant also. The further case of the 1st plaintiff her mother 2nd plaintiff was residing in the house and the defendant to visit her mother on the guise of looking after her mother It was also averred subsequently she trespassed into the rooms and started a clinical laboratory. There was an unequivocal admission by the defendant herself that the omana purchased the properties. The original contention she was that she was a lessee of the building. In Ext.A7 sale deed dated 9-9-1985 the address of the defendant was given as Kanakkuzhy Puthen Veedu. The defendant deposed that this building belonging to her uncle but the defendant has no case that at any point of time she was residing in the house belonging to her uncle. The defendant

herself had admitted that the panchayath had assessed the buildings and in the records of the Panchayath Omana was shown as the owner of the building. The main piece of evidence relied upon the is Ext.B13 alleged to have written on 12-1-1989 by the 1st plaintiff to the defendant. As rightly noted by the court below Ext.B13 will not prove her possession It only shows that Omana used to sent money and gave directions regarding the construction of the building in the plaint schedule and renovation of existing building. Merely because a person working in Germany sent money to her close relatives to look after the construction of the building, it cannot be held that such a person who looking after the construction is tenant of the building. Another piece of evidence relied on by the defendant was Ext.B12 agreement alleged to have been executed by the 1st plaintiff entrusting the building to the defendant. DW3 who was a peon in PWD's office is examined to prove Ext.B12 As per Ext.B12 plaintiff gave possession of the properties to defendant on 16-2-1979. According to DW3 he had written Ext.B12 agreement when he handed over key of the building vacated by PWD. DW3 had stated that when he handed over key, the 1st plaintiff and defendant were there and on the basis of request made by them he had written Ext.B12. But a reading of Ext.B12 agreement will show that DW3 was not telling truth. As per

Ext.B12 the building was yet to be evicted from the possession PWD. DW3 deposed that before entering into Ext.B12 the building was vacated by PWD and key was handed over. But the recitals in Ext.B12 are to the effect that even on the date of execution of the document the building was in the possession of DW2. So the finding of the Trial court that DW3 was giving false evidence is only to be upheld. In fact ,the trial court had found that Ext.B12 is a document fabricated for the purpose of creating evidence. The defendant relied on Ext.B14 agreement. ExtB14 is dated 22-6-1990 in which the defendant had agreed to vacate the premises within 8 months. As rightly observed by the court below that the agreement will not show she was in possession of the building as a tenant from the year 1978. D15 certificate issued by DW4 shows that the defendant was member of Vyapari Vyvasaya Samithy and she was conducting the business in the plaint schedule property from 1978 onwards. If as a matter of fact the defendant was conducting business in the premises from 1978 she could have produced certificate from the local authority

12. The defendant examined Sanal kumar who is admitted to be the tenant of Plaintiff as DW5. He given evidence that he took the building on rent from defendant. . It is very pertinent to note that the

defendant had no case that she let out the building to Sanalkumar. So the view taken by the court below that evidence of DW5 cannot be believed is also perfectly correct. So the defendant miserably failed to prove that her sister let out the building to her in the year 1978 and she is in occupation as a tenant and she is entitled the protection under the provision of Rent Control Act. It is also very pertinent to note that though in the original written statement filed by the defendant she had admitted the title and possession of her sister. In the additional written statement filed she denied the title of her sister and contended that the right, title of the plaintiff had lost by adverse possession and limitation But there is absolutely no evidence adduced to prove that contention. As rightly observed by the court below Ext.B13 letter will show that even in 1980 1st plaintiff asserted her title and possession over the building. Though the defendant contended in the additional written statement that she constructed the building she had not proved that contention Ext.B13 produced by the defendant to prove that contention as relied by Ext.B13 itself. Though the defendant raised a contention that she renovated the building spending more than 5 lakhs of rupees that contention was also not substantiated. So the finding of the court below that the defendant is a trespasser is only to be confirmed. The findings of this Court below that

the 1st plaintiff was the owner the suit properties and she had constructed building and she sold the same property to the 3rd plaintiff and hence she is entitled to get a decree declared his title over the A schedule property and to recover B schedule building from the defendant who is a trespasser is only to be confirmed. The dismissal of O.S. 91/96 and 17/2000 does not require any interference . There is no merit in these appeals and the appeals are only to be dismissed.

13. In the result, A.S 387/2000, R.F.A Nos. 665 & 666/2004 are dismissed. The parties directed directed to suffer their costs.

K.PADMANABHAN NAIR,JUDGE

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